Andover Conservation Commission Meeting Minutes October 4, 2011

Town of Andover 36 Bartlett Street 3rd Floor Conference Room 7:45pm

Conservation Commission Members in Attendance:

Chairman Donald Cooper, Commissioner Alix Driscoll, Commissioner Jon Honea, Commissioner Kevin Porter and Commissioner Floyd Greenwood (arrived 8:15)

SCHEDULED ITEMS:

5 Regis Road

Present in Interest: John Murphy, Robert and Carol French, Dean Lacostic

Staff Recommendation: Approve as Pos.2b and Neg.3

Public Meeting on the Request for Determination of Applicability filed to determine the accuracy of the boundaries of resource area delineation and if the proposed construction of a 30' x 24' garage addition, including driveway modifications, to an existing single family house is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Mr. Douglas presented this to the Commission. Waivers are requested for setback requirements and delineation. The plan submitted shows the wetland very close to the proposed garage, when the garage is about 70 feet from the wetland. Wetlands are shown to go uphill in the steepest part of the site and an isolated puddle in the lawn is shown as a bordering wetland. The waiver for the setbacks is moot since the project is 70 feet from the wetland based on site evaluation. Staff recommended granting the waiver for delineation provided the Applicant submit a corrected plan accurately showing the wetland, the stone wall and drain, sedimentation control, and monumentation along the current tree line.

Chairman Cooper commented on how profoundly incorrect this plan is, but that the project is approvable with a corrected plan.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Approve as Pos.2b and Neg.3, with Merrimack Engineering to submit an updated plan and the permit will issue upon receipt of the updated plan. The Motion was seconded by Commissioner Honea and unanimously approved.

21 off Webster Street

Staff Recommendation: Approve as Neg.3, Neg.6 and vote to withdraw DA2009-020 without prejudice.

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed abandonment of an existing septic system and construction of a replacement septic system is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Agent Cleary presented this Commission. The filing is under the WPA only. The project fully complies with our regulation setback and plan requirements for the upgrade of an existing septic system. The new system is a drip disposal system. Staff noted flow in the culvert and was able to locate some non-disturb bounds. The BVW has been confirmed by Jeff Bridge. Staff recommends the non-disturb bounds be located on site and marked with flag stakes for the contractor and possible new homeowners. The Applicant is asking for a withdrawal without prejudice for Determination of Applicability DA2009-020 for the same work.

Chairman Cooper asked for a Motion. Commissioner Porter made a Motion to Approve as Neg.3 and Neg.6, it was seconded by Commissioner Driscoll and unanimously approved. Commissioner Porter made a Motion to Approve the withdrawal without prejudice a requested by the Applicant, it was seconded by Commissioner Honea and unanimously approved.

3 Hidden Road

Present in Interest: Sean Herlihy

Staff Recommendation: Approve as Pos.2 and Neg.3

Public Meeting on the Request for Determination of Applicability filed to determine if the removal of an existing deck and replace with exact same size deck is subject to the Massachusetts Wetlands Protection Act.

Commissioner Driscoll rescued herself.

Mr. Douglas presented this to the Commission. This is a "Backyard Project". The deck is nearly 100 feet from the BVW and the project is within our setbacks. This is a one to one replacement of an unsafe deck with the same dimensions on sona tube construction. The Applicant is seeking a waiver for Engineered Plans. The Applicant will draw the correct wetland line on the submitted plan.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to Approve the waiver for engineered plans, it was seconded by Commissioner Porter and unanimously approved.

Commissioner Honea made a Motion to Approve as Pos.2 and Neg.3 with the plan altered, it was seconded by Commissioner Porter and unanimously approved.

75 Porter Road

Present in Interest: Markus Jork, Stephen Pustell

Staff Recommendation: Approve as Pos2a confirming wetland flags 1A through 9A inclusive and Neg.3.

Public Meeting on the Request for Determination of Applicability filed to determine if the removal of an existing open car port 10' x 20', construction of a new 26' x 25' two car attached garage, relocation of an existing shed and construction of a retaining wall is subject to the Massachusetts Wetlands Protection Act.

Agent Cleary presented this to the Commission. The project is under the WPA only and waivers are not needed for plan requirements, but are necessary for setback requirements. This is a "Backyard Project". The house pre-dates the By-Law. The wetland flagging was at the toe of slope and was reasonable. Staff recommends a variable buffer strip with bounds to be conditioned. The retaining wall is 28 feet from the wetland, not 30 feet; the closest portion of the garage to the wetland is 35 feet, not 50 feet; and the shed is 40 feet from the wetland, not 50 feet. The Applicant will provide a letter for inability to meet setbacks.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to Approve the waiver for approved setbacks, it was seconded by Commissioner Driscoll and unanimously approved. Commissioner Honea made a Motion to Approve as Pos.2a confirming wetland flagging 1A through 9A, inclusive and Neg.3, it was seconded by Commissioner Driscoll and unanimously approved.

Newport Circle Subdivision

Present in Interest: Mark Johnson, Bill MacLeod, Markus Phinney

Staff Recommendation: Deny and restore alterations

Public Hearing on the Request for an Amendment to the Order of Conditions filed under the Massachusetts Wetlands Protection Act, and/or the Andover Wetlands Protection By-Law, for tree clearing above the maximum square footage permitted for this subdivision and lots encumbered at Newport Circle Subdivision.

5 Newport Circle

Present in Interest: Bill MacLeod, Markus Phinney, Ralph Sabatino, Thomas and Joanne Giacchetto

Staff Recommendation: Approve pool as insignificant with reforesting/replication plan to be submitted prior to commencement of work.

6 Newport Circle

Present in Interest: Mark Johnson, Bill MacLeod, Markus Phinney, Ralph Sabatino

Staff Recommendation: Deny and seek remediation.

Chairman Cooper opened Newport Circle Subdivision, 5 Newport Circle and 6 Newport Circle. Agent Cleary presented this to the Commission. This submission meets our requirements for a Request for an Amendment, except the plan is missing the profiles of all drainage structures and notes regarding replication/restoration. The project does not comply with the Order of Conditions as unauthorized clearing has occurred. This is an after-the-fact approval for clearing above the maximum square footage allowed in the Order of Conditions. The proponent has submitted extensive calculations asserting that there is no increase in runoff. If the Commission chooses to move towards an approval, a peer review may be in order. The site is not in complete compliance, further road sweeping needs to occur as well as cleaning of detention pond which is loaded with sediment. The site is also in violation with the ZBA for cutting trees on the 15% slopes. No hardship is shown for extra cutting which would trigger extra stormwater management.

Mr. MacLeod addressed the Commission, giving the background of the property. The clearing was done by Newport of Andover, LLC. The original Order of Conditions allowed clearing for drainage purposes and specified that expanded roof runoff should be used to compensate for additional cutting. None of the cutting was done in the expanded no-disturb zone, but to it, but not beyond it. All lots in the subdivision now comply with the setback regulations and rooftop runoff.

Commissioner Greenwood stated that the additional cutting was a clear violation of the original Order of Conditions and it did not give permission to clear more than agreed upon. He agreed with Agent Cleary that the Commission should seek restoration and mitigation. The trees were left to protect the watershed. The original Order of Conditions stated a specific square footage to be cleared, it did not allow clear cutting.

Markus Phinney, the site monitor, believes the decision on the amendment to the subdivision should guide what is done on Lot 5. The cutting was done beyond the limit of clearing on the lots. The detention drainage system is functioning with silt running through the system. This should be maintained by the subdivision owner. Lot 5 was supposed to have been stabilized by October 4, 2011 and removal of 2 trees insignificant as shown on the revised plan.

Mr. Giachetto addressed the Commission. He agrees to install 2 haybale lines, silt fencing with silt socks to protect the haybale line and hopes to loam and seed this week. He has paid to have the street and cul-de-sac swept however there is still sediment in the cul-de-sac and it will be swept again next week.

*Chairman Cooper asked for a Motion on Newport Circle Subdivision. Commissioner Greenwood made a Motion to close the public hearing and deny the request for an Amendment to the Order of Conditions allowing after the fact clearing, Commissioner Driscoll seconded the Motion and it was unanimously approved.

*This paragraph of the approved minutes was changed on a Motion by Commission Greenwood, seconded by Commissioner Driscoll, and voted by majority vote with Commissioner Fink abstaining on February 7, 2012, to better reflect and clarify the intent of the motion.

5 Newport Circle

Markus Phinney informed the Commission that the stabilization was completed, the plan changes are minor, however reforesting needs to be done. He would allow temporary work within the limit of clearing to construct the wall then reforest the area after the work is done. Mr. MacLeod stated that the Mr. Giachetto and Mr. Katsikis have come to an agreement for a reforesting plan to be completed within 30 days. Mr. Giachetto needs to begin construction on the pool as soon as possible. Suggested they Commission let the work begin and if the reforesting plan is not submitted within 30 days, then a cease and desist order can be issued. The Commission disagreed and wants the plan before work can begin on the pool. Mr. Giachetto stated that he has cooperated with the Commission since they found out about the clearing. He has worked with Markus to stabilize the lot. Mr. Katsikis is responsible for the reforesting plan. Construction of the pool will help stabilize the lot and protect the wetlands. If Mr. Katsikis does not submit the plan, Mr. Giachetto will submit the reforesting plan for his lot.

Chairman Cooper suggested the Commission could approve the pool work and removal of 2 trees to stabilize the site with no work until the Applicant meets with staff and Markus to approve the plan in a specified time period.

Mr. MacLeod suggested the reforesting plan can be produced within 2 weeks to allow work on the pool and the Commission could issue a cease & desist if needed.

Chairman Cooper asked for a Motion for 5 Newport Circle. Commissioner Greenwood made a Motion to close the public hearing and approve the changes as insignificant as to the removal of 2 trees, the drain pipe not to extend into the wetland and work cannot commence until the revised plan showing restoration area is submitted and approved. The Motion was seconded by Commissioner Driscoll and approved by a vote of 4-1 with Chairman Cooper opposed.

**Chairman Cooper asked for a Motion for 6 Newport Circle. Commissioner Greenwood made a Motion to close the public hearing and deny the Request for an Amendment to the Order of Conditions, it was seconded by Commissioner Driscoll and unanimously approved.

**This paragraph of the approved minutes was changed on a Motion by Commission Greenwood, seconded by Commissioner Driscoll, and voted by majority vote with Commissioner Fink abstaining on February 7, 2012, to better reflect and clarify the intent of the motion.

2 Porter Road

Present in Interest: Barry Sullivan, Andrew Caffrey, Frederick Geisel and Stephen Pustell

Staff Recommendation: Continue to date uncertain

Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for construction of single family homes and associated utilities.

Mr. Douglas presented this to the Commission. There are 2 lots under the Notice of Intent, however they have separate plans. There are no resource areas or buffer. The lot lines do not correspond with the topo and there is no narrative on how the wetlands were determined and the Commission would like both lots on one plan. The distance from the structure to the BVW is 70 feet at the closest point, so setbacks are met. The lots were delineated sometime between 2008 and 2010 and should be rechecked.

Mr. Geisel showed the Commission the project plans. At one time there were 3 lots with a common driveway. The house will be built on already disturbed area that used to be the tennis court for Lot 1. There is no work within the 50 foot buffer.

The bank needs to be shown on the revised plan as well as the intermittent stream with directional flow.

Lot 2 also meets the setback requirements, however there is a letter from an abutter. Commissioner Porter asked how many trees were to be cut for Lot 2.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to continue to a date uncertain, it was seconded by Commissioner Driscoll and unanimously approved.

Mass Bay Commuter Railroad Company Present in Interest: Jack Connors, Gerald Steeves and Samantha Hart

Staff Recommendation: Issue Order of Conditions

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for work encompassing track installation within the existing MBTA railroad right-of-way from the Tewksbury/Andover town line north to Tewksbury Street.

Agent Cleary presented this to the Commission. This was continued from September 21, 2011 for DEP comments and supplementary information from Natural Heritage and stormwater management. According to DEP there is no requirement that DEP make comments on every Notice of Intent. Natural Heritage stated that the work will not effect the natural habitat. Stormwater management is fine as no new additions will be made. The debris will not be stockpiled and there will be no fueling within 100 feet of the buffer zone. Commissioner Greenwood met with Jack Connors and they agreed the debris will be removed and some sort of gating will be installed to prevent motorized vehicles from entering the trail.

Chairman Cooper asked for a Motion. Commissioner Porter made a Motion to close the public hearing, it was seconded by Commissioner Greenwood and unanimously approved.

Commissioner Greenwood made a Motion to issue the Order of Conditions similar to the other track work to include fueling language and debris, it was seconded by Commissioner Driscoll and unanimously approved.

Gerald Steeves had addressed the Commission during the previous track work project regarding drainage problems at Ballardvale. The work was supposed to be done last year to correct the problem. The drain from Ballardvale ends at this property line. Mr. Connors agreed that the work is in the Order of Conditions and will be done as soon as the funding comes through.

ACTION ITEMS:

12 Fosters Pond Road

Staff Recommendation: Not significant and No Violation Occurred.

Consideration of significance and issuance of Enforcement Order for revisions to the approved site plan. The beavers are cutting the trees.

Commissioner Driscoll made a Motion to find the revisions not significant and no violation occurred, it was seconded by Commissioner Honea and unanimously approved.

6 Nob Hill Circle

Staff Recommendation: Find insignificant

Consideration of significance for a modification to plan that would extend the 12' 0" wide deck to 19' 0" in length.

Commissioner Honea made a Motion to find the change insignificant, it was seconded by Commissioner Driscoll and unanimously approved.

CONSENT AGENDA:

16 Tiffany Lane

Issuance of a Satisfactory Completion of Work Certificate

6 Regency Ridge

Issuance of a Certificate of Compliance.

Minutes

Approval of minutes for meeting of September 6, 2011 and September 21, 2011.

Commissioner Honea made a Motion to Approve the Consent Agenda, it was seconded by Commissioner Driscoll and unanimously approved.

DISCUSSION ITEMS/INFORMATION ITEMS THAT MAY REQUIRE A VOTE:

Boy Scout Troop 77

Present in Interest: T.J. Norton

Eagle Scout project to build a 75 foot boardwalk on Pomps Pond Reservation across a flooded section of the trail leading to Fosters Island. The lumber has been donated for the project. T.J. will sink tire rims in the muck to support the bridge from underneath. The Commission requested any cutting be done on a tarp to contain the sawdust and be carried out.

Commissioner Driscoll made a Motion to Approve the project, it was seconded by Commissioner Porter and unanimously approved.

Franciscan Land

Discussion on the "Andover Franciscan Land" relative to the Franciscan Task Force and proposals for Franciscan Land Planning. Commissioner Fink to work with the task force.

9 Steven Circle

Ratify an Enforcement Order issued to the DPW for unauthorized/unapproved work.

Commissioner Driscoll made a Motion to Approve, it was seconded by Commissioner Porter and unanimously approved.

The next meeting will be held at 7:45pm on October 18, 2011.

The meeting was adjourned at 10:37pm by Motion of Commissioner Driscoll, seconded by Commissioner Honea and unanimously approved.

Respectfully submitted,

Lynn Viselli, Recording Secretary